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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BANK OF SOUTHERN CALIFORNIA, N.A., Plaintiff, Cross-defendant and Respondent, v. D&D GORYOKA, INC., Defendant, Cross-complainant and Appellant.	D069767 (Super. Ct. No. 37-2011-00101423-CU-OR-CTL)

APPEAL from a postjudgment order of the Superior Court of San Diego County, Katherine A. Bacal, Judge. Reversed and remanded with directions.

Franklin & Franklin and J. David Franklin for Defendant, Cross-complainant and Appellant.

Mulvaney Barry Beatty Linn & Mayers and Everett G. Barry, Jr., John A. Mayers, Christopher B. Ghio, for Plaintiff, Cross-defendant and Respondent.

Defendant, cross-complainant and appellant D&D Goryoka, Inc. (DGI) appeals from a postjudgment order denying its motion for an award of prevailing party attorney fees in a lawsuit filed by plaintiff, cross-defendant and respondent Bank of Southern California, N.A. (Bank). The trial court had entered judgment in DGI's favor on Bank's complaint but entered a joint and several judgment in Bank's favor against DGI's codefendants Ghassan Goryoka, Amir Goryoka, Izik Aziz Goryoka, and Goryoka, Inc.[1] In ruling on DGI's attorney fee motion, the court determined DGI was the prevailing party on the contract at issue in the action, but denied recovery of attorney fees, reasoning DGI was "only entitled to those attorney's fees that would not have been incurred but for the fact that it was named as an additional defendant" and DGI had not shown what fees were incurred by it alone. DGI contends that (1) the court lacked discretion to deny it an award of attorney fees as the prevailing party on the contract within the meaning of Civil Code section 1717; (2) the court erred by applying Code of Civil Procedure section 1032 to its motion, but even if that statute was applicable, the court erred by reasoning DGI was not entitled to any fee award because it was united in interest with the remaining unsuccessful defendants, a rationale that the Legislature eliminated by its 1986 repeal and reenactment of Code of Civil Procedure section 1032; and (3) apportionment of attorney fees was not necessary among DGI and its unsuccessful codefendants where all of the

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1 As we did in our prior opinion, we refer to the individual defendants by their first names to avoid confusion. We refer to D&D Goryoka, LLC as LLC, Goryoka, Inc. as GI, and appellant D&D Goryoka, Inc. as DGI.

defendants presented a common and unified defense. DGI further contends any attorney fee award belongs to its attorney.

We reject DGI's latter contention. However, we reverse the postjudgment order denying it attorney fees and remand with directions that the trial court award DGI reasonable attorney fees after determining the extent to which, if at all, the fees incurred may be apportioned among DGI and its unsuccessful codefendants.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2007, Bank loaned $880,000 to LLC. At the same time, Ghassan, Amir, Izik, DGI, and GI executed agreements guaranteeing LLC's indebtedness to Bank. The agreements contain clauses in which the guarantors promised to pay all expenses Bank incurred to enforce the guaranty, including attorney fees and costs.

LLC defaulted on its loan in August 2011, and Bank demanded payment from Ghassan, Amir, Izik, DGI, and GI under their guaranties. In September 2011, the defendants breached their respective guaranties by failing to make payment on the loan.

Bank sued Ghassan, Amir, Izik, DGI, and GI, asserting various causes of action including for breach of the guaranty agreements and common counts. Ghassan, Amir, Izik, DGI, and GI answered Bank's complaint and cross-complained against Bank for fraud in the inducement.

The matter proceeded to trial, in which the court was asked to decide whether valid guaranty contracts existed between Bank and each defendant, and whether the defendants had a valid affirmative defense on grounds the guaranties were sham and defendants were the "true borrowers" on the loan. With respect to Ghassan, Amir, Izik

and GI, the court found no credible evidence supported their sham guaranty defense or that they were the true borrowers on the loan. However, it found evidence to support DGI's sham guaranty defense, and ruled DGI was a true borrower on the loan because Bank viewed it as a principal obligor under a different name. The court entered judgment in Bank's favor jointly and severally against Ghassan, Amir, Izik and GI on Bank's complaint, and also on defendants' cross-complaint. The judgment provides that Bank was to recover nothing on its complaint against DGI.

DGI moved for an award of $908,171.25 in attorney fees and costs as the prevailing party on the guaranty agreement under Civil Code section 1717 and Code of Civil Procedure sections 1032 and 1033.5.[2] In part, DGI acknowledged it had filed a certificate of dissolution in December 2012 and argued Bank had waived any issue concerning its dissolution by Bank's silence on the matter, but DGI was entitled in any event to defend Bank's action against it despite the dissolution.

In opposition, Bank argued the court had already ruled DGI was entitled to only $395 in costs[3] in part because it was jointly represented by the same counsel as the other four codefendants. It argued DGI was not entitled to attorney fees under Civil Code

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2 LLC also moved for an award of attorney fees and costs but later conceded it was not entitled to such an award, and the trial court denied LLC's request. Bank successfully moved for attorney fees against Amir, Izik and GI in the amount of $350,342.75. Ghassan had apparently filed for bankruptcy and Bank's attorney fee claim was subject to an automatic bankruptcy stay.

3 Bank had separately moved to tax DGI's costs, and in May 2015 the trial court granted that motion in part in the amount of $20,764.29, awarding DGI only $395 in costs. DGI does not appeal from that separate postjudgment order.

section 1717 because it did not prevail on its cross-complaint against Bank, which sought to rescind the loan documents including DGI's guaranty on grounds of fraud or mistake, and thus there was a mixed result as neither Bank nor DGI achieved their primary litigation objectives, giving the court discretion to declare that neither party prevailed on the DGI guaranty. Bank further argued under Code of Civil Procedure section 1032 and authorities such as *Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267 and *Benson v. Kwikset Corp.* (2007) 152 Cal.App.4th 1254, DGI could not claim attorney fees as costs as a matter of right even if the court determined it prevailed against Bank, because all of the defendants were represented by the same counsel and presented the identical sham guaranty defense. Finally, Bank argued that "virtually all" of DGI's attorney fees had been incurred after December 28, 2012, when DGI voluntarily dissolved and its known assets were distributed, and as a result DGI was not entitled to recover such fees.

DGI's counsel filed a supplemental declaration subtracting 214.13 hours of attorney time incurred on the litigation of DGI's cross-complaint, and eliminated $112,418.25 in fees from its request. It revised its request to total $795,753 in attorney fees. DGI in any event argued in reply, among other arguments, that if the court concluded that all of the claims, including its cross-complaint for fraud, were actions "on the contract" for purposes of attorney fees, it would be entitled to its originally sought-after $908,171.25 in fees. It further argued that because Code of Civil Procedure sections 1032 and 1033.5 did not apply to its motion, there was no basis to employ the unity of interest principle to deny it fees, and apportionment was not required because the

defendants' liability was so factually interrelated that it was impossible to separate the fees into compensable and noncompensable units.

The court denied DGI's request for attorney fees. It found DGI was the prevailing party on the contract under Civil Code section 1717. However, the court observed defendants were represented by the same attorney, filed a joint answer, and presented a united defense, and that as to costs, it had previously ruled DGI was permitted to recover only those costs that would not have been incurred but for the fact it was named as an additional defendant. It found "no compelling reason why the unity of interest principle of apportionment should apply to costs but not attorney's fees" and therefore ruled DGI was "only entitled to those attorney fees that would not have been incurred but for the fact that it was named as an additional defendant." Because DGI had not shown what fees were incurred by it alone, the court denied DGI's motion in its entirety.

DGI filed this appeal from the postjudgment order.

DISCUSSION

I. *Legal Principles and Standard of Review*

Entitlement to attorney fees is governed by Code of Civil Procedure section 1032, which provides in part: "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) "The statute defines the prevailing party to include four categories of parties: the party with a net monetary recovery, the defendant in whose favor a dismissal was entered, the defendant where neither plaintiff nor defendant recovers any relief, and the defendant against whom plaintiff has not recovered any relief.

([Code Civ. Proc,] § 1032, subd. (a)(4).) In other situations or when a party recovers other than *monetary* relief, the prevailing party is determined by the court, and the award of costs is within the court's discretion. [Citations.] [¶] It is clear from the statutory language that when [a party falls within] one of the four categories of prevailing party[], that party is entitled to costs as a matter of right; the trial court has no discretion to order each party to bear his or her own costs." (*Michell v. Olick* (1996) 49 Cal.App.4th 1194, 1197-1198; see also *David S. Karton, A Law Corporation v. Dougherty* (2014) 231 Cal.App.4th 600, 613-614.)

Attorney fees may be awarded to the prevailing party as part of an award of costs when an award of fees is authorized by contract. (Code Civ. Proc., §§ 1032, subd. (b), 1033.5, subd. (a)(10)(A); Civ. Code, § 1717, subd. (a);[4] *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606 ["recoverable litigation costs do include attorney fees, but only when the party entitled to costs has a legal basis, independent of the cost statutes and grounded in an agreement, statute, or other law, upon which to claim recovery of attorney fees"].) The fees awarded must be reasonable in amount and reasonably necessary to the conduct of the litigation. (Civ. Code, § 1717; Code Civ. Proc., § 1033.5, subd. (c)(2), (3).) In determining what constitutes a reasonable fee, the court considers " 'a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required

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4 Civil Code section 1717, subdivision (a) states that "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded . . . then the party who is determined to be the party prevailing on the contract . . . shall be entitled to reasonable attorney's fees in addition to other costs."

in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.' " (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

"The amount to be awarded as attorney's fees is left to the sound discretion of the trial court. The trial judge is in the best position to evaluate the services rendered by an attorney in his courtroom; his judgment will not be disturbed on review unless it is clearly wrong." (*Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 522 (*Vella*); see also *PLCM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1095.) " 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong" '—meaning that it abused its discretion." (*PLCM Group v. Drexler*, at p. 1095.)

" ' "On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs in this context have been satisfied amounts to statutory construction and a question of law." ' " (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213; see also *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 237 [court reviews a determination of the legal basis for an award of attorney fees independently as a question of law].) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

II. *DGI is a Prevailing Party Under Code of Civil Procedure Section 1032 and Civil Code Section 1717, Entitling It to Recover Attorney Fees as a Matter of Right*

DGI argues, and Bank does not dispute, that DGI was the prevailing party on the contract within the meaning of Civil Code section 1717. DGI maintains that as a result, the trial court had no discretion to deny it an award of attorney fees. DGI further argues that Code of Civil Procedure section 1032 did not apply to its motion, but even if it did, the Legislature in 1986 repealed the unity of interest principle derived from that statute and the court erred by relying on it. It relies in part on *Goodman v. Lozano* (2010) 47 Cal.4th 1327, which acknowledged that the Legislature's repeal of a prior statute and enactment of a new statute on the same subject with significant differences in language strongly suggested the Legislature intended to change the law. (*Id*. at p. 1337, citing *People v. Mendoza* (2000) 23 Cal.4th 896, 916.)

We reject DGI's curious claim that Code of Civil Procedure section 1032 did not apply to its motion. In moving for an attorney fee and costs award, DGI expressly relied in part on Code of Civil Procedure section 1032. The statute benefits DGI, since under it a prevailing party is defined to include, as DGI is here, "a defendant as against those plaintiffs who do not recover any relief against that defendant." (Code Civ. Proc., § 1032, subd. (a)(4).) As the prevailing party, DGI was entitled to recover its litigation costs as a matter of right, which "include attorney fees . . . when the party entitled to costs has a legal basis, independent of the cost statutes and grounded in an agreement, statute, or other law, upon which to claim recovery of attorney fees." (*Santisas v. Goodin*, *supra*,

17 Cal.4th at p. 606.) Such is the case here, where the guaranty contained an attorney fee provision, and both Code of Civil Procedure section 1032 and Civil Code section 1717 entitle DGI to an award of costs and attorney fees as a matter of right on Bank's action on the guaranty agreements. (Accord, *David S. Karton, A Law Corporation v. Dougherty*, *supra*, 231 Cal.App.4th at p. 614 [holding one party was the prevailing party under both Code of Civil Procedure section 1032 and Civil Code section 1717 for an award of costs and attorney fees].)

We further agree with DGI that the unity of interest rationale, on which the trial court appeared to rely in denying DGI any award of attorney fees, is no longer viable in view of the 1986 repeal and reenactment of Code of Civil Procedure section 1032. Prior to 1986, Code of Civil Procedure section 1032, subdivision (b), provided in part: "[C]osts are allowed of course: [¶] . . . [¶] To the defendant upon a judgment in his favor . . . or as to whom the action is dismissed. *When there are several defendants in any action . . . not united in interest*, and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor." (Former Code Civ. Proc., § 1032, as amended by Stats. 1957, ch. 1172, § 1, italics added; see *Smith v. Circle P Ranch Co.*, *supra*, 87 Cal.App.3d at p. 271.) That provision was construed to provide that "[i]n those instances in which several defendants are united in interest and/or join in making the same defenses in the same answer, the allowance or disallowance of an award to prevailing defendants lies within the sound discretion of the trial court." (*Smith v. Circle P Ranch Co.*, at p. 272.)

As our colleagues in Division Three of the Fourth District Court of Appeal recently explained, the 1986 reenactment of Code of Civil Procedure section 1032 "substantially changed the statutory framework for determining which parties are entitled to recover costs as a matter of right." (*Charton v. Harkey* (2016) 247 Cal.App.4th 730, 741.) *Charton* reviewed the differences in former Code of Civil Procedure section 1032 and the current version of the statute: "[T]he current version of [Code of Civil Procedure] section 1032 provides for recovery of costs as a matter of right if the party fits one of the four prevailing party definitions listed in [Code of Civil Procedure] section 1032, subdivision (a)(4). The current statute no longer focuses on the nature of the lawsuit to distinguish between parties who are entitled to costs as a matter of right and those who may recover costs in the court's discretion. Instead, [Code of Civil Procedure] section 1032 now focuses on the nature of the prevailing party's victory—the party with a net recovery, a defendant in whose favor a dismissal is entered, a defendant when neither party obtains any relief, and a defendant against those plaintiffs who did not recover any relief against that defendant. If a party satisfies one of these four definitions of a prevailing party, the trial court lacks discretion to deny prevailing party status to that party. [Citation.] Most significantly, the current version of [Code of Civil Procedure] section 1032 eliminated the language regarding several defendants who are not united in interest and asserted separate defenses by separate answers." (*Ibid*.) Thus, *Charton* concluded that "the new statute eliminated any basis to apply the unity of interest exception found in the repealed version," and consequently "the Legislature intended to eliminate the unity of interest exception as a basis for denying costs to a prevailing

defendant who otherwise is entitled to recover costs as a matter of right." (*Id*. at pp. 741-742.) *Charton* declined to follow post-1986 cases, including *Benson v. Kwikset Corp.*, *supra*, 152 Cal.App.4th 1254 relied upon by Bank here, observing they failed to explain how the exception remained viable after the Legislature had omitted the language supporting it. (*Charton*, at p. 742.)

Bank suggests that the overhaul of Code of Civil Procedure section 1032 was not so broad, and did not do away with the unity of interest principle. It argues that *Goodman v. Lozano*, *supra*, 47 Cal.4th 1327 does not support DGI's position because *Goodman* involved only the 1986 revisions to Code of Civil Procedure section 1032 that changed the definition of prevailing party from the party who obtains judgment in that party's favor to "the party with the net monetary recovery." *Goodman* involved a question not relevant here: whether the term "net monetary recovery" in Code of Civil Procedure section 1032, subdivision (a)(4) should be interpreted to include or exclude offsets for pretrial settlements to a damage award. (*Id*. at p. 1330.) But in addressing the question, the California Supreme Court recognized the Legislature's broad rewrite, observing that "at the time current [Code of Civil Procedure] section 1032 was reenacted, the 'existing statutes d[id] not fully explain the concept of the "prevailing party," ' and that a 'comprehensive definition' was necessary to 'further eliminate confusion.' " (*Id*. at p. 1336.) More recently, in *DeSaulles v. Community Hosp. of Monterey Peninsula* (2016) 62 Cal.4th 1140, the California Supreme Court pointed out legislative history indicates the Legislature sought to consolidate relevant law governing costs recovery and simplify the present procedure for determining costs. (*Id*. at p. 1149.) It stated that "absent

indications to the contrary, the Legislature intended the 1986 reenacted version of [Code of Civil Procedure] section 1032 to incorporate existing law regarding defendants as prevailing parties after a dismissal." (*Id.* at p. 1151.) It found such a contrary indication in *Goodman v. Lozano, supra,* 47 Cal.4th at 1237, concluding in that case that the Legislature's definition of prevailing party as the party receiving a net monetary recovery repudiated case law that had deemed a party prevailing if it had obtained a monetary recovery regardless of offsets from settling defendants. (*DeSaulles,* at p. 1151, citing *Goodman,* at pp. 1336-1337.)

We conclude the Legislature's omission of the united-in-interest language from former [Code of Civil Procedure] section 1032 in the reenacted statute is an "indication[ ] to the contrary" (*DeSaulles v. Community Hosp. of Monterey Peninsula, supra,* 62 Cal.4th at p. 1151) that repudiates case law permitting a trial court to exercise its discretion to deny an award of costs to a prevailing defendant who is united in interest with other defendants. (Accord, *Charton v. Harkey, supra,* 247 Cal.App.4th at pp. 741-742; *Zintel Holdings, LLC v. McLean* (2012) 209 Cal.App.4th 431, 442 [stating in dicta that it was "doubtful" that the Legislature intended the continued use of the unity of interest exception given its creation of categories of litigants entitled to costs as a matter of right and elimination of the language on which the exception was based].) We decline to read an exception no longer reflected in the statutory language of Code of Civil Procedure section 1032. (*Charton,* at p. 741.)

III. *The Trial Court Must Exercise Its Discretion to Apportion Fees or Decide They Cannot Be Apportioned and Limit an Award to Those Reasonably and Necessarily Incurred by DGI*

DGI's status as the prevailing party "does not mean that the trial court's concern regarding the complete overlap of [its] defense with that of [the remaining codefendants], who [are] not so entitled, is irrelevant to its ultimate [attorney fee] award." (*Zintel Holdings, LLC v. McLean*, *supra*, 209 Cal.App.4th at p. 443.) DGI may recover only attorney fees reasonable in amount and reasonably necessary to defend Bank's action. (*Ibid.*; Code Civ. Proc., § 1033.5, subd. (c)(2), (3).) And whether to apportion fees between coparties is a matter entrusted to the trial court's " 'broad discretion.' " (*Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4th 1192, 1197, quoting *Zintel Holdings*, at p. 443.) As explained in *Hill v. Affirmed Housing Group*, in which contractual attorney fees were awarded pursuant to Civil Code section 1717, "[a] prevailing defendant 'may recover only reasonable attorney fees incurred in [its] defense of the action by [the plaintiff].' [Citation.] 'To the extent [a prevailing defendant's] shared counsel engaged in litigation activity on behalf of [a codefendant] for which fees are not recoverable, the [trial] court has broad discretion to apportion fees.' [Citation.] ' "A court may apportion fees even where the issues are connected, related or intertwined." ' [Citation.] And, ' "although time-keeping and billing procedures may make a requested segregation difficult, they do not, without more, make it impossible." ' [Citation.] 'Allocation of fees incurred in representing multiple parties is not required . . . ,' however, when the claims at issue are ' " ' "inextricably intertwined," ' " ' such that it is not possible to differentiate

between compensable and noncompensable time." (*Hill*, at p. 1197; see also *Brown Bark III, L.P. v. Haver* (2013) 219 Cal.App.4th 809, 830; *Cruz v. Ayromloo* (2007) 155 Cal.App.4th 1270, 1277.)

DGI contends there is no reason to apportion attorney fees among it and the unsuccessful defendants. According to DGI, the apportionment of attorney fees between successful and unsuccessful defendants jointly represented by counsel should be governed by the same rules that govern multiple causes of action where some claims, but not others, authorize an award of attorney fees. Under those rules, DGI argues, no apportionment is necessary where there are common issues as between the causes of action, and because all of the defendants in this case presented a common and unified defense, it would be impossible to apportion attorney fees between DGI and the other unsuccessful defendants.

Bank responds that the trial court had discretion to determine that fees must be apportioned, whether under Code of Civil Procedure section 1032 or Civil Code section 1717. It argues the court did not abuse its discretion when it required DGI to apportion its fees. Though Bank does not squarely renew its argument that DGI's dissolution barred it from recovering any award of attorney fees, it points out that DGI has not explained "how or why [DGI], a dissolved entity, incurred or became liable for attorneys' fees that would not otherwise have been incurred by its non-prevailing co-defendants."

Having concluded the unity of interest exception is no longer viable, we reject any contention by Bank that the court's discretion included denying DGI fees entirely. While the manner of apportionment of attorney fees among successful and unsuccessful parties

is vested in the court's sound discretion, it is an abuse of discretion for the court to make no attempt whatsoever to apportion. (See, e.g., *Zintel Holdings, LLC v. McLean*, *supra*, 209 Cal.App.4th at p. 444; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 159; *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1297-1298.) " 'Where discretion has been exercised in a manner that exceeds the applicable legal standards, the proper remedy is to reverse the order and remand the matter to the trial court in order to give it the opportunity to make a ruling that comports with those standards.' " (*Graciano*, at p. 159.)

Here, DGI was entitled as a matter of right to *reasonable* fee award and to have the trial court either attempt to apportion the fees or determine that apportionment was not possible. " 'In referring to '*reasonable*' compensation, [our Supreme Court] indicated that trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation.' " (*Holguin v. DISH Network LLC* (2014) 229 Cal.App.4th 1310, 1330.) In determining a reasonable fee, the court is under no obligation to award the full extent of fees claimed by DGI's attorney, and retains discretion to omit fees as inefficient or duplicative. (*Ibid*.) As stated, it is entitled to look broadly at "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." (*PCLM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1096.) Similarly, in deciding the manner of apportionment, the court must assess "the interplay between the . . . various [claims and parties], the evidence offered at trial, and the reasonableness of the time spent on various

aspects of the [defendants'] trial presentation." (*Holguin*, at p. 1332.) That issues are connected, related or intertwined does not preclude apportionment, but the court may decide the claims were so inextricably intertwined as to make apportionment impossible. (*Hill v. Affirmed Housing Group, supra*, 226 Cal.App.4th at p. 1197.)

Additionally, we do not suggest that DGI's dissolution is irrelevant to the court's reasonableness and apportionment determinations. It is "[an]other circumstance[]" (*PCLM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1096) that the court may consider. It is true that though DGI filed a certificate of dissolution in December 2012, it continued to exist for the purpose of winding up its affairs and defending actions against it. (*Peñasquitos, Inc. v. Superior Court* (1991) 53 Cal.3d 1180, 1185; Corp. Code, § 2010, subd. (a).[5]) We leave it to the trial court to analyze whether that circumstance precludes recovery of some portion of the sought-after fees under the above-described principles.

IV. *The Attorney Fee Award Belongs to DGI*

DGI contends that any award of attorney fees belongs to its counsel, not to it as the appellant. It relies on *Flannery v. Prentice* (2001) 26 Cal.4th 572, which involved an award of attorney's fees under Government Code section 12965, part of the California

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5 "[Corporations Code s]ection 2010, subdivision (a) . . . explains the purposes for which the corporate existence continues after dissolution: 'A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof.' " (*Peñasquitos, Inc. v. Superior Court*, *supra*, 53 Cal.3d at p. 1185, italics omitted.) "Thus, a corporation's dissolution is best understood not as its death, but merely as its retirement from active business." (*Id.* at p. 1190.)

Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) and addressed "the narrow question . . . whether a party may receive or keep the proceeds of a fee award when she has neither agreed to pay her attorneys nor obtained from them a waiver of payment." (*Flannery*, at pp. 580-581.) The Supreme Court in *Flannery* thus considered whether attorney fees awarded belong to the litigant or to the litigant's attorney, and ultimately concluded "that any proceeds of a [Government Code] section 12965 fee award exceeding fees the client already has paid belong, absent a contractual agreement validly disposing of them, to the attorneys for whose work they are awarded." (*Id*. at p. 577.)

This case was not brought under the FEHA nor were fees awarded under Government Code section 12965. The court awarded fees under DGI's guaranty agreement and Civil Code section 1717, and we decline to extend *Flannery*'s holding to this case. *Flannery*'s holding turned on legislative intent and policy concerns relating to "attorneys considering whether to undertake cases that vindicate fundamental public policies," circumstances not present here. (*Flannery v. Prentice*, *supra*, 26 Cal.4th at p. 583.) *Flannery* provides no basis for us to declare that a fee award belongs to DGI's counsel, as the statutory context and public policy concerns are inapplicable in this context.

DISPOSITION

We reverse the postjudgment order denying DGI an award of attorney fees and remand the matter with directions that the court award DGI its reasonable attorney fees as the prevailing party after determining the extent to which, if at all, the fees incurred may be apportioned among DGI and its unsuccessful codefendants. DGI shall recover its costs, including attorney fees, on appeal in an amount to be determined by the trial court.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.